

**26-38-3.5. Smoking ban exemption for Native American ceremony.**

(1) A person is exempt from the restrictions of Section 26-38-3 if the person:

(a) is a member of an American Indian tribe whose members are recognized as eligible for the special programs and services provided by the United States to American Indians who are members of those tribes;

(b) is an American Indian who actively practices an American Indian religion, the origin and interpretation of which is from a traditional American Indian culture;

(c) is smoking tobacco using the traditional pipe of an American Indian tribal religious ceremony, of which tribe the person is a member, and is smoking the pipe as part of that ceremony; and

(d) the ceremony is conducted by a pipe carrier, Indian spiritual person, or medicine person recognized by the tribe of which the person is a member and the Indian community.

(2) This section takes precedence over Section 26-38-3.

(3) A religious ceremony using a traditional pipe under this section is subject to any applicable state or local law, except as provided in this section.

Enacted by Chapter 125, 1995 General Session